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FIRST GENERAL COUNSEL'S REPORT

SENSITIVE

MUR: 5367

DATE COMPLAINT FILED: May 30, 2003

DATE OF NOTIFICATION: 6/6/03

DATE ACTIVATED: 8/6/03

EXPIRATION OF SOL: 4/1/08

COMPLAINANT:

Raquelle de la Rocha

RESPONDENTS:

U.S. Representative Darrell Issa
Rescue California . . . Recall Gray Davis
and Vona Copp, as Treasurer

RELEVANT STATUTES:

2 U.S.C. § 441i(e)
2 U.S.C. § 441a
2 U.S.C. § 441b

INTERNAL REPORTS CHECKED:

Disclosure Reports

STATE AGENCIES CHECKED:

California Secretary of State

FEDERAL AGENCIES CHECKED:

None

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I. INTRODUCTION

The complaint in this matter alleges that Darrell Issa, a U.S. Representative from California's 49th Congressional District, violated the Federal Election Campaign Act of 1971, as amended ("the Act"), by "soliciting nearly half a million dollars in 'soft money' corporate contributions" on behalf of Rescue California . . . Recall Gray Davis ("Rescue California").

Complaint at 1. Rescue California, an unincorporated state ballot measure committee organized under section 527 of the Internal Revenue Code, fought to remove former California Governor Gray Davis from office through a recall process set forth in the California Constitution. Cal. Const. Art. II, § 13, *et seq.*; *see also* Cal. Gov't Code § 11021, *et seq.* (2003). Complainant alleges that Rep. Issa "is controlling" Rescue California and that in addition to soliciting non-Federal funds (i.e., funds not subject to the Act's limitations and prohibitions) on behalf of that committee, he caused a significant amount of prohibited corporate funds to be donated to it from Greene Properties, Inc., a corporation he owns with his wife. Complaint at 2-3.

In sum, complainant alleges that Rep. Issa and Rescue California have violated the Bipartisan Campaign Reform Act's ("BCRA") prohibition on Federal officeholders raising, spending, and receiving non-Federal funds. 2 U.S.C. § 441i(e)(1).¹ Rep. Issa contends he did not violate the Act because, as a candidate for state office, his fundraising activities on behalf of

¹ This report analyzes the Act, as amended by BCRA, and Commission regulations, including those promulgated to implement the BCRA amendments, as they pertain to the activities at issue. On May 2, 2003, a three-judge panel of the United States District Court for the District of Columbia ruled that a number of BCRA provisions are unconstitutional and issued an order enjoining the enforcement, execution, or other application of those provisions *McConnell v FEC*, 251 F. Supp. 2d 948 (D.D.C. 2003); *prob juris noted*, 123 S. Ct. 2268 (U.S. 2003) (decision pending). Subsequently, the district court stayed its order and injunction pending the Supreme Court's decision. *McConnell v FEC*, 253 F Supp. 2d 18 (D D C. 2003) The district court's ruling did not affect the provisions at issue here.

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1 Rescue California “fall within the exception to the non-Federal funds ban stated in 2 U.S.C. §
2 441i(e)(2).” Response at 1.²

3 The Act prohibits Federal officeholders from soliciting, receiving, directing, transferring
4 or spending funds “in connection with any election other than an election for Federal office”
5 unless the funds are subject to the limitations and prohibitions otherwise applicable to Federal
6 elections under the Act. 2 U.S.C. § 441i(e)(1)(B). As discussed below, the recall is an election
7 “other than an election for Federal office.” Thus, the extent of Rep. Issa’s liability turns on
8 whether he established, financed, maintained, or controlled Rescue California, a state ballot
9 measure committee. *See* AO 2003-12 (Flake). If he did, he is liable for all of his fundraising
10 activities on behalf of that committee. If he did not, he is only liable for those fundraising
11 activities occurring after the recall measure qualified for the ballot. *Id.*

12 The available information indicates that Rescue California was established, financed, and
13 maintained by Rep. Issa because he provided that committee with more than 60% of its total
14 funds, and with all of its “seed money.” As such, Rep. Issa may have violated the Act by raising
15 non-Federal funds on behalf of, and donating non-Federal funds to, Rescue California. *Id.* Rep.
16 Issa appears to have donated or caused to be donated non-Federal funds to Rescue California
17 both before and after the recall qualified for the ballot. Moreover, the available information
18 suggests Rep. Issa may have solicited non-Federal funds. Though Rep. Issa was a gubernatorial
19 candidate at one time, we conclude that section 441i(e)(2) is not applicable to his fundraising
20 activities on behalf of Rescue California.

² This Office initially notified only Darrell Issa of the complaint in this matter because he was the only respondent named. Upon activation, however, it became clear that Rescue California should be notified as well. Though Rescue California and its treasurer, Vona Copp, were served with notice of the complaint on August 19, 2003, we have received no response to date.

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Because we conclude Rescue California was established, financed, and maintained by Rep. Issa, it is also subject to 2 U.S.C. § 441i(e)(1)(B) and appears to have violated that provision by receiving non-Federal funds. Like Rep. Issa, Rescue California does not appear to be entitled to the section 441i(e)(2) exception. Consequently, this Office recommends the Commission find reason to believe Rep. Issa and Rescue California violated the Act by soliciting, receiving, directing, transferring, or spending non-Federal funds in connection with the California recall election (the "recall election"). An investigation will allow the Commission to seek additional information regarding the scope of Rep. Issa's involvement with Rescue California and the extent to which he solicited funds on behalf of that committee.

II. BACKGROUND INFORMATION

By California law, the California Secretary of State will schedule a special election to determine whether to recall an elected official upon receipt of a petition signed by eligible voters representing at least twelve percent of the last vote for the office – 897,158 in this case. Cal. Const. Art. II, § 14. An effort to collect enough signatures to force such an election began on February 5, 2003, when then-Governor Davis was served with a copy of a petition to recall him from office. See <http://www.rescuecalifornia.com/petition.pdf>.

Initially, the main proponent of the recall effort was the Davis Recall Committee. See <http://davisrecall.com/about/org.cfm>. In early May 2003, the recall effort was described as "struggling," with Davis advisors quoted in the press as calling the recall petition "little more than a nuisance." John Marelius, *Issa May Put Money Behind Recall Effort*, San Diego Union-Tribune, May 7, 2003, at A3 (Complaint Attachment I). With a quarter of the allotted signature collection time gone, the Davis Recall Committee had reportedly gathered just over ten percent of the required signatures. Mark Z. Barabak and Richard Simon, *Davis Recall Drive Still*

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1 *Lacking Cash*, Los Angeles Times, May 8, 2003. The Davis Recall Committee also apparently
2 lacked cash, having raised about \$200,000, while “[m]ost political professionals estimate[d] that
3 a successful statewide petition campaign would cost at least \$2 million.” John Marelius, *Issa*
4 *Says He Won’t Bankroll Recall Effort*, San Diego Union-Tribune, April 25, 2003.

5 With the fate of the recall in question, Rep. Issa reportedly sought to revive the effort,
6 announcing he would “participate as a donor.” *Id.* Rep. Issa was described as “seeking to
7 commandeer the struggling drive,” “bankroll[ing] the campaign,” and “tak[ing] control of the
8 recall organization.”³ Rep. Issa’s advisers were quoted as saying the Congressman had “taken a
9 leadership role.” Jean O. Pasco, *O.C. Republican Donors Pledge Funds for Recall*, Los Angeles
10 Times, May 17, 2003. A new recall committee, Rescue California . . . Recall Gray Davis,
11 registered with the California Secretary of State on May 12, 2003. Attachment 1. Reports filed
12 with the California Secretary of State show that Greene Properties, Inc. (“Greene Properties”), a
13 corporation apparently controlled by Rep. Issa, made the first reported donation to Rescue
14 California on May 8, 2003. Attachment 2. Rep. Issa is the Chief Executive Officer of Greene
15 Properties, Inc. See Complaint Attachment C. His wife, Katherine, the only other officer, is the
16 company’s Chief Financial Officer, Secretary, and agent for service of process. *Id.* The Issas are
17 Greene Properties’ only board members. *Id.* Since the first donation, Greene Properties and
18 Rep. Issa have donated an additional \$1,745,000 to Rescue California.

19 Newspapers credited Rep. Issa’s infusion of cash with “invigorating” the recall effort.
20 See Phil Yost, *Davis Recall Heats Up*, San Jose Mercury News, June 1, 2003; Dan Walters,
21 *Politicians Jockeying as Davis Recall Drive Gains Steam*, Sacramento Bee, June 9, 2003, at A3.

³ These quotes appeared, respectively, in Marelius, *supra*, Dena Bunis and John Howard, *Issa Offers to Help Bankroll Davis Recall*, Orange County Register, May 7, 2003, and Jean O. Pasco, *Lincoln Club to Aid Recall*, Los Angeles Times, May 17, 2003.

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1 With the additional funds, Rescue California paid \$929,000 for a professional signature
2 gathering drive and \$670,000 for a direct-mail campaign in addition to other expenses. Dan
3 Morain and Gregg Jones, *The Recall Campaign*, Los Angeles Times, August 1, 2003.⁴

4 On July 23, 2003, California's Lieutenant Governor certified that recall supporters had
5 gathered enough signatures to qualify the measure for a special election, and set the recall
6 election for October 7, 2003.⁵ Rep. Issa apparently continued to cause corporate funds to be
7 donated to Rescue California after the recall measure qualified for the ballot, as Greene
8 Properties donated \$50,000 on August 4, 2003. On August 7, 2003, Rep. Issa, who had
9 established a campaign committee for the replacement candidate election, withdrew from the
10 race, but vowed to continue funding the recall effort. Rene Sanchez and Kimberly Edds, *Calif.*
11 *Gubernatorial Race Shapes Up*, Washington Post, August 7, 2003. Indeed, he donated \$35,000
12 in his own name to Rescue California on August 19, 2003, and an additional \$50,000 on October
13 2, 2003, just prior to the recall election on October 7, 2003.

14 **III. FACTUAL AND LEGAL ANALYSIS**

15 The Act, as amended by the Bipartisan Campaign Reform Act of 2002 ("BCRA"), Pub.
16 L. 107-155, 116 Stat. 81 (March 27, 2002), provides, in pertinent part, that effective
17 November 6, 2002, Federal officeholders and entities established, financed, maintained, or
18 controlled by Federal officeholders may not solicit, receive, direct, transfer, spend, or disburse
19 non-Federal funds "in connection with any election other than an election for Federal office,"
20 unless such funds are subject to the Act's contribution limits and prohibitions. 2 U.S.C.

⁴ These figures are substantially confirmed by forms filed with the California Secretary of State.

⁵ The U.S. Court of Appeals for the Ninth Circuit subsequently entered an injunction preventing the election from being held on October 7, 2003, but this decision was reversed by an *en banc* panel of the court. *Southwest Voter Registration Educ. Project*, No. 03-56498, 2003 WL 22119858 (9th Cir. Sept. 15, 2003), *rev'd en banc*, No. 03-56498, 2003 WL 22175955 (9th Cir. Sept. 23, 2003).

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1 § 441i(e)(1)(B). The recall election was such an election. Moreover, the available information
2 indicates that Rescue California was established, financed, maintained, or controlled by Rep.
3 Issa. Thus, Rep. Issa appears to have violated the Act by raising and spending non-Federal funds
4 in connection with the recall election. *Id.*; *see also* AO 2003-12 (Flake).⁶ Moreover, Rescue
5 California appears to have violated the Act by receiving non-Federal funds. 2 U.S.C.
6 § 441i(e)(1)(B).

7 **A. The Recall Election was an “Election Other than an Election for Federal Office.”**

8
9 This Office’s conclusion that the recall election was an “election other than an election
10 for Federal office” is consistent with Advisory Opinion 2003-12 (Flake). In that opinion, the
11 Commission found that section 441i(e)(1)(B) applied not only to fundraising activities in
12 connection with elections for state or local *office*, but also to ballot measure elections, like the
13 recall election. Like the committee at issue in Flake, Rescue California is a state ballot measure
14 committee raising funds in connection with a state ballot measure election. Thus, Rescue
15 California’s activities were in connection with “an election other than an election for Federal
16 office.”

17 The requester in AO 2003-12 was U.S. Representative Jeff Flake, the chairman and
18 founder of Stop Taxpayer Money for Politicians (“STMP”), an organization seeking to qualify an
19 Arizona ballot measure repealing portions of that State’s campaign finance statute. *Id.* at 1. Rep.
20 Flake asked the Commission, *inter alia*, whether STMP’s activities were “in connection with an
21 election” within the meaning of section 441i(e)(1)(B). *Id.* at 4. The Commission answered that
22 STMP’s activities were “in connection with any election other than an election for Federal
23 office” pursuant to section 441i(e)(1)(B). *Id.* at 6. In reaching this conclusion, the Commission

⁶ Non-Federal funds are defined as “funds that are not subject to the limitations and prohibitions of the Act.”
11 C.F.R. § 300.2(k)

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1 compared the term “any election other than an election for Federal Office” in section
2 441i(e)(1)(B) with language in section 441i(e)(1)(A) applying to activity “in connection with an
3 election for Federal office,” and section 441b(a) which applies to elections “to any political
4 office.” *Id.* Finding that Congress intended to set section 441i(e)(1)(B) apart from these more
5 narrow provisions, the Commission advised the requester that section 441i(e)(1)(B) is “not
6 limited to elections for a political office.” *Id.*

7 The Commission further found that,

8 [A]ll activities of a ballot measure committee “established, financed, maintained,
9 or controlled” by a Federal candidate [or officeholder] are “in connection with
10 any election other than an election for Federal office.” This includes activity in
11 the signature-gathering and ballot qualification stage, as well as activity to win
12 passage of the measure after it qualifies for the ballot. On the other hand, the
13 Commission concludes that the activities of a ballot measure committee that is not
14 “established, financed, maintained, or controlled” by a Federal [officeholder] are
15 not “in connection with any election other than an election for Federal office”
16 prior to the committee qualifying an initiative or ballot measure for the ballot, but
17 are “in connection with any election other than an election for Federal office”
18 after the committee qualifies an initiative or ballot measure for the ballot.

19
20 AO 2003-12 at 6.

21 Thus, a second important threshold question is whether Rescue California was
22 established, financed, maintained, or controlled by Rep. Issa. If it was, then all of its activity, not
23 just that after the recall qualified for the ballot, would be “in connection with an election other
24 than an election for Federal office.” Because of the particular facts of this case, this conclusion
25 would significantly affect the scope of Rep. Issa’s personal liability. Moreover, if Rescue
26 California was established, financed, maintained, or controlled by Rep. Issa, Rescue California
27 would itself be subject to section 441i(e).

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B. Rescue California was Established, Financed, Maintained, or Controlled by Rep. Issa.

To determine whether a Federal officeholder directly or indirectly established, financed, maintained, or controlled another entity and is therefore a “sponsor” of that entity, the Commission must examine a variety of factors, set forth at 11 C.F.R. § 300.2(c)(2)(i) through (x). The Commission examines these non-exclusive factors “in the context of the overall relationship between the sponsor and the entity to determine whether the presence of any factor or factors is evidence that the sponsor directly or indirectly established, finances, maintains or controls the entity.” 11 C.F.R. § 300.2(c)(2).⁷

Applied to the current situation, the available information indicates:

- Rep. Issa had an active and significant role in the formation of Rescue California. 11 C.F.R. § 300.2(c)(2)(ix);
- Rep. Issa provided funds in a significant amount to Rescue California. 11 C.F.R. § 300.2(c)(2)(vii); and
- Rep. Issa caused and arranged funds in a significant amount to be provided to Rescue California on an ongoing basis. 11 C.F.R. § 300.2(c)(2)(viii).

1. Rep. Issa had an active role in Rescue California's formation.

Rep. Issa provided Rescue California with “seed money.” 11 C.F.R. 300.2(c)(2)(ix).

Before Rescue California was formed, Issa's aides were quoted as saying that he “would commit a six-figure sum to the recall campaign,” and that “he and others would soon come up with ‘in the neighborhood of a half-million dollars’ as he seeks to raise \$1.2 million to pay for a professional signature-gathering drive.” (Complaint Attachment H.) On May 8, 2003, Issa's company, Greene Properties, provided the first donation reported by Rescue California in the

⁷ Although some changes in terminology reflect the new context presented by the enactment of 2 U.S.C. § 441i, the factors essentially replicate the affiliation factors listed at 11 C.F.R. § 100.5(g)(4)(ii) and 11 C.F.R. § 110.3(a)(3)(ii). See *Explanation and Justification for Final Rule on Prohibited and Excessive Contributions Non-Federal Funds or Soft Money* (“E&J”), 67 Fed. Reg. 49064, 49084 (July 29, 2002).

1 amount of \$100,000. Attachment 2. Greene Properties apparently donated these funds before
2 Rescue California had even filed its May 12, 2003 Statement of Organization with the California
3 Secretary of State. Attachment 1.⁸ Rescue California used this donation to finance the newly
4 formed committee's activities. As such, Rep. Issa played an essential role in Rescue California's
5 formation – its financing.

6 **2. Rep. Issa donated or caused to be donated funds in a significant**
7 **amount to Rescue California.**
8

9 Rep. Issa does not appear to deny that he financed and maintained Rescue California. In
10 his response, Rep. Issa acknowledges that he is a “funding source for the state law effort against
11 the Governor.” Response at 1. Moreover, in his August 7, 2003 speech withdrawing from the
12 race, Rep. Issa stated, “I will continue with my wife's support to fund the effort to recall Gray
13 Davis” Rene Sanchez and Kimberly Edds, *Calif. Gubernatorial Race Shapes Up*,
14 Washington Post, August 7, 2003.

15 Reports filed with the California Secretary of State demonstrate the extent of Rep. Issa's
16 financial involvement. Since May 8, 2003, Rep. Issa has donated or caused to be donated
17 \$1,845,000, a facially significant amount, to Rescue California both through Greene Properties
18 and in his own name. *See* 11 C.F.R. § 300.2(c)(2)(vii), *see also supra* p. 5. The following chart
19 shows donations to Rescue California by Greene Properties, presumably caused to be donated by
20 Rep. Issa:

⁸ There is an apparent disparity as to when the Statement of Organization for Rescue California was filed with the California Secretary of State. The Form 410 available on the Secretary of State's website lists May 12, 2003, as the date Rescue California registered, while the form submitted by Complainant as Attachment A is dated May 6, 2003. The Complaint, however, indicates that the form was “dated May 12, 2003.” Complaint at 2; *cf* Complaint Attachment A and Attachment 1. This Office assumes for purposes of this report that the version posted on the Secretary of State's official website is correct.

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DATE	AMOUNT	DESCRIPTION
May 8, 2003	\$100,000	Direct donation.
May 19, 2003	\$100,000	Payment from Greene Properties to Bader & Associates on behalf of Rescue California for "Petition Circulation" costs
May 23, 2003	\$245,000	Direct donation.
May 30, 2003	\$200,000	Direct donation
June 5, 2003	\$155,000	Direct donation.
June 10, 2003	\$200,000	Direct donation.
June 13, 2003	\$150,000	Direct donation
June 20, 2003	\$130,000	Direct donation.
June 24, 2003	\$250,000	Payment from Greene Properties to Bader & Associates on behalf of Rescue California for "Petition Circulation" costs.
July 2, 2003	\$180,000	Direct donation.
August 4, 2003	\$50,000	Direct donation.
TOTAL:	\$ 1,760,000	

As the chart demonstrates, Greene Properties has donated \$1.76 million to Rescue California. Additionally, as discussed further below, Rep. Issa has donated \$85,000 to Rescue California in his own name. Thus, Rep. Issa has caused significant payments to be made to Rescue California. In addition, these funds were donated regularly – indeed, almost weekly during the first two months of the crucial signature gathering period – indicating that the donations were made on an “ongoing basis.” In total, more than 60% of Rescue California’s \$3,053,772 in total reported receipts came from Greene Properties or Rep. Issa.⁹ These facts strongly indicate that in addition to financing Rescue California, Issa “maintained” that

⁹ While \$1.165 million of the total donated by Rep. Issa and Greene Properties was in the form of loans, it appears that the company will not be repaid. Rep. Issa’s campaign manager, Scott Taylor, was reported as saying that Issa “doesn’t expect to be repaid” for the loans to Rescue California. Jim Miller, *Issa Backing Recall Drive with Loans, Not Cash*, Press Enterprise (Riverside, CA), Aug. 1, 2003, at A11. The article quoted Taylor as saying that “more than likely, [the loans] will be written off.” *Id*

committee. 2 U.S.C. § 441i(e)(1)(B); 11 C.F.R. §§ 300.2(c)(2)(vii)-(viii).

Rep. Issa's donations were critical to Rescue California's successful effort to qualify the recall for the ballot. Prior to the creation of Rescue California, the grassroots recall effort had gathered only 100,000 of the nearly 900,000 signatures needed for a recall election. *See* Mark Z. Barabak and Richard Simon, *Davis Recall Drive Still Lacking Cash*, Los Angeles Times, May 8, 2003. According to media reports, Bader and Associates successfully "gathered more than a million signatures to place the recall on the ballot." Dan Morain and Gregg Jones, *The Recall Campaign*, Los Angeles Times, August 1, 2003 at 8. Indeed, without Issa's donations, Rescue California would not have been able to afford the services of Bader and Associates, a Newport Beach based company, which was paid \$944,000 to gather the required signatures, including \$350,000 directly from Greene Properties. As one newspaper reported, "strategists on both sides of the California recall fight agree ... that without a large cash infusion from a Republican millionaire, the recall would never have succeeded." Paul West, *Putting Democracy Up for Sale*, The Baltimore Sun, Aug. 3, 2003.

Rep. Issa donated a "significant amount," 11 C.F.R. § 300.2(c)(2)(vii)-(viii), to Rescue California and enabled that committee to collect the vast majority of signatures required to reach its goal. Rep. Issa's role in providing Rescue California with its seed money, infusing the committee with needed cash throughout the ballot qualification period, and continuing to fund the committee even after the recall measure qualified for the ballot, provides strong basis from which to conclude that he established, financed, and maintained Rescue California.

C. Rep. Issa Appears to have Violated 2 U.S.C. § 441i(e).

As discussed above, ample evidence suggests Rep. Issa sponsored Rescue California. The available information further suggests Rep. Issa violated the Act by soliciting funds on

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1 behalf of, donating to, and causing corporate funds to be donated to, Rescue California both
2 before and after the recall measure qualified for the ballot. *See infra*, Section B.1. Even if he did
3 not sponsor Rescue California, Rep. Issa would have violated the Act by donating and causing to
4 be donated funds to the committee after the recall measure qualified for the ballot. AO 2003-12.

5 **1. Rep. Issa apparently caused Greene Properties to donate corporate**
6 **funds to Rescue California.**

7
8 Rep. Issa caused corporate funds to be donated to Rescue California. As stated above,
9 Greene Properties is a corporation and, as such, would be prohibited from making contributions
10 or expenditures in connection with a Federal election under 2 U.S.C. § 441b(a). Therefore, Rep.
11 Issa, a Federal officeholder, violated the Act by causing Greene Properties to spend its corporate
12 funds in connection with the recall election. As stated above, Greene Properties donated a total
13 of \$1,760,000 to Rescue California. Of this amount, \$50,000 was donated after July 23, 2003,
14 the date the recall measure qualified for the ballot. Thus, regardless of whether Rep. Issa
15 established, financed, maintained, or controlled Rescue California, he caused at least \$50,000 in
16 corporate funds to be donated to Rescue California in violation of the Act.

17 **2. Rep. Issa personally donated more funds to Rescue California than**
18 **would have been permissible under 2 U.S.C. § 441a(a)(1)(C).**

19
20 In addition to his apparent corporate donations, Rep. Issa also appears to have violated
21 the Act by “spending” or “disbursing” his own funds in connection with the recall election
22 because his donations were in excess of the amount permitted to be made to a political
23 committee under 2 U.S.C. §§ 441a(a)(1)-(3). The most Rep. Issa could contribute as an
24 individual to “any other political committee” is \$5,000. 2 U.S.C. § 441a(a)(1)(C). However,
25 Rep. Issa donated \$35,000 to Rescue California in his own name on August 19, 2003, and an
26 additional \$50,000 on October 2, 2003. Therefore, Rep. Issa spent or disbursed \$80,000 more

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1 from his own funds than was permissible under 2 U.S.C. § 441i(e)(1)(B)(i), all after the recall
2 qualified for the ballot.

3 **3. Rep. Issa may have solicited prohibited or excessive funds.**

4
5 Rep. Issa may also have violated the Act by soliciting non-Federal funds. Complainant
6 states that donations to Rescue California from Dan Gamel, Inc., the Lincoln Club of Orange
7 County, and the Morongo Indian Tribe were “a direct result of Mr. Issa’s efforts.” Complaint at
8 5. Press reports indicate that Mr. Gamel met with Rep. Issa, quoting him as saying, “He came
9 . . . I met him, and we talked. I committed to give him \$10,000, and I also committed to give
10 him \$100,000 if they got the required amount of signatures.” Richard A. Oppel Jr., *Leader of*
11 *Effort to Recall Governor is Named in Dispute Over Campaign Finances*, New York Times,
12 June 12, 2003, at A22. Disclosure reports indicate that Mr. Gamel donated \$10,000 on May 20,
13 2003. The president of the Lincoln Club of Orange County, Michael D. Capaldi, was also
14 reported to have met with Rep. Issa, and to have said of the meeting, “It’s great to work together
15 with friends on something this important . . . We appreciate Darrell’s entrepreneurship and will
16 do everything we can to help make [the recall] a success.” Jean O. Pasco, *O.C. Republican*
17 *Donors Pledge Funds for Recall*, Los Angeles Times, May 17, 2003. After the complaint was
18 filed, however, Mr. Capaldi reportedly denied that Rep. Issa solicited funds, stating, “We talked
19 before we made the contribution to find out what his plans were, but the initiative, the impetus,
20 came from us.” Michael Finnegan, *Davis Ally Says Issa Broke Law in Recall Drive*, Los
21 Angeles Times, May 29, 2003. The Lincoln Club donated \$81,350 between May 23 and July 21,
22 2003.¹⁰ Publicly available information thus indicates there is reason to believe Rep. Issa may

¹⁰ While one report indicates the Morongo Indian Tribe met with Rep. Issa, disclosure reports do not indicate the Tribe made any donation. Oppel, *supra*.

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1 have solicited non-Federal funds in connection with the recall election in violation of

2 2 U.S.C. § 441i(e)(1)(B).¹¹

3 **4. The section 441i(e)(2) exception is inapplicable.**

4 Rep. Issa's response rests on the argument that his activities in support of Rescue
5 California are permissible under 2 U.S.C. § 441i(e)(2). Response at 2. That provision allows
6 Federal candidates and officeholders running for state or local office to raise and spend non-
7 Federal funds. 2 U.S.C. § 441i(e)(2). For several reasons, section 441i(e)(2) is inapplicable to
8 Rep. Issa's fundraising activities on behalf of Rescue California.

9 **a. The narrow section 441i(e)(2) exception does not apply to**
10 **fundraising activities on behalf of state ballot measure committees**
11 **like Rescue California.**
12

13 Under the section 441i(e)(2) exception, section 441i(e)(1)

14 [D]oes not apply to the solicitation, receipt, or spending of funds [by a Federal
15 officeholder] who is or was also a candidate for a State or local office *solely in*
16 *connection with such election for State or local office* if the solicitation, receipt, or
17 spending of funds is permitted under State law and refers only to such State or local
18 candidate, or to any other candidate for the State or local office sought by such candidate,
19 or both.”
20

21 2 U.S.C. § 441i(e)(2) (emphasis added). That exception thus allows Federal officeholders to
22 raise money for their State or local campaign committees – activity presumptively governed by
23 State or local law – without regard to the Act. However, the Commission's Explanation &
24 Justification for 11 C.F.R. § 300.63, the regulation implementing section 441i(e)(2), makes clear
25 that the exception applies only to Federal candidates and officeholders raising funds “for their

¹¹ This Office is mindful of the Commission's concerns regarding finding liability under the Act based on an officeholder's private conversations. See AO 2003-3 (Cantor) (“The Commission was concerned that imputing intent when a private conversation is not clear on its face could lead to finding a violation when the candidate involved had no intention of soliciting contributions. Such a result is not dictated by BCRA's statutory language and would raise constitutional concerns”) (citing “Prohibited and Excessive Contributions: Nonfederal Funds or Soft Money; Final Rule,” 67 Fed. Reg. 49064, 49086-87 (July 29, 2002)). Here, however, the available information raises questions about whether Rep. Issa explicitly “asked” others to make a donation. Discovery on this point will focus on the presence or absence of an explicit request.

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1 state campaign.” *See* E&J, 67 Fed. Reg. at 49107. Organizations supporting the recall generally
2 are distinct from specific candidates’ campaign committees. Rep. Issa had two state campaign
3 committees for which he is or was able to raise non-Federal funds under 2 U.S.C. § 441i(e)(2).¹²

4 Section 441i(e)(2)’s language demonstrates its limited scope. While under section
5 441i(e)(1)(B) Federal officeholders are prohibited from soliciting, receiving, or spending non-
6 Federal funds “in connection with *any election* other than an election for Federal office,” section
7 441i(e)(2) allows such individuals to solicit, raise, and spend funds “solely in connection with
8 *such election for State or local office.*” 2 U.S.C. §§ 441i(e)(1)(B), 441i(e)(2) (emphases added).
9 The Commission has viewed such distinctions as significant.

10 In AO 2003-12, the Commission stated, “Where Congress uses different terms, it must be
11 presumed that it means different things.” AO 2003-12 at 5. In keeping with this canon of
12 statutory construction, the Commission interpreted section 441i(e)(1)(B) to include state ballot
13 measure elections as opposed to only elections for political office. AO 2003-12. “Congress
14 expressly chose to limit the reach of section 441b(a) to those non-Federal elections for a
15 ‘political office,’ while intending a broader sweep for section 441i(e)(1)(B), which applies to
16 ‘any election’” AO 2003-12 at 5 (footnote omitted). The 441i(e)(2) exception – like
17 sections 441i(e)(1)(A) and 441b(a) – has a more narrow sweep, applying only to activities in
18 connection with elections “for State or local office.” 2 U.S.C. § 441i(e)(2).¹³

19 Rep. Issa contends his activities on behalf of Rescue California fall under section
20 441i(e)(2) “[because] the petition process for qualifying the recall election is a legal requirement

¹² Issa for Governor 2003 was formed as Rep. Issa’s campaign committee for the recall election, while Darrell Issa for Governor appears to have been formed as a campaign committee for the 2006 gubernatorial election. Both committees are still registered as “active” with the California Secretary of State.

¹³ The legislative history of section 441i(e)(2) also demonstrates its narrow scope. A July 10, 2001 House Report discussing that provision states that BCRA prohibits Federal officeholders from “raising soft money in connection with a federal election . . . unless [the] candidate or official is also a state or local candidate, raising funds *for that campaign*” H.R. Rep. 107-131(I), at 6 (2001) (emphasis added).

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1 to holding a new election for Governor and, therefore, part and parcel, under California law, of
2 Mr. Issa's candidacy for Governor." Response at 2. However, Rescue California is a state
3 ballot measure committee, not a campaign committee. As such, section 441i(e)(2) is not
4 applicable to Rep. Issa's fundraising activities on behalf of Rescue California. Though
5 California law is not binding on the Commission, it is noteworthy that this interpretation is
6 consistent with California law.

7 **b. California law treats recall committees as distinct from candidate**
8 **committees.**
9

10 California law treats Rescue California as a ballot measure committee, not a campaign
11 committee. The California Fair Political Practices Commission ("CFPPC") has recognized that
12 "[r]ecall elections are unique because they have both the characteristics of a ballot measure and a
13 candidate election." CFPPC, Fact Sheet – Recall Elections, July 2003, at 1 (emphasis omitted)
14 (Attachment 3). Nonetheless, the CFPPC states unequivocally that a "recall falls within the
15 definition of a 'measure' under section 82043 of the [California Elections Code]" and that,
16 therefore,

17 [S]tate law treats recall elections as ballot measures, the 'issue' being whether the
18 officeholder should be recalled. In contrast, the second part of the ballot is
19 actually a candidate election . . . Because different rules sometimes apply between
20 the two types of elections, the answers to questions about conduct related to 'the
21 recall' depend on which part of the election is involved.
22

23 *Id.* While California law allows Rescue California to raise unlimited funds, replacement
24 candidate committees are limited to \$21,200 per eligible donor. Ca. Gov't Code § 85301;
25 CFPPC Fact Sheet at 1, 2. Contrary to respondent's assertion, recall committees and
26 replacement candidate committees are different types of entities, serving different purposes, and
27 are treated differently under California law. While Rep. Issa is free to raise and spend non-
28 Federal funds for his two State campaign committees, he may only raise funds subject to the

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1 Act's limits and prohibitions on behalf of Rescue California. In fact, Rep. Issa's gubernatorial
2 committees did take advantage of section 441i(e)(2), receiving funds from prohibited sources
3 and in excess of the Act's limits.

4 **c. Rescue California's activities do not appear, under section**
5 **441i(e)(2), to "refer to" any particular candidate.**
6

7 Even if section 441i(e)(2) did apply to fundraising activities on behalf of state ballot
8 measure committees like Rescue California, that provision may not apply to the particular
9 activities at issue here. As stated above, section 441i(e)(2) allows Federal officeholders to raise
10 and spend non-Federal funds in connection with a State or local election, "if the solicitation,
11 receipt, or spending of funds is permitted under State law *and refers only to such State or local*
12 *candidate, or to any other candidate for the State or local office sought by such candidate, or*
13 *both.*" 2 U.S.C. § 441i(e)(2) (emphasis added). California sets no limits on fundraising by recall
14 committees, so all donations to Rescue California are "permitted under state law." See CFPPC
15 Fact Sheet at 2. However, Rescue California does not appear to "refer" in its solicitations or
16 advertising to Rep. Issa or any other candidate for governor in the replacement candidate
17 election. Complaint at 6.¹⁴

18 The complaint asserts that Rescue California's "sole purpose is to recall Governor
19 Davis," and that it was "not formed to support Mr. Issa's . . . campaign for governor." *Id.*
20 Indeed, California law prohibits recall committees controlled by a candidate from advocating the
21 election of a replacement candidate. CFPPC Fact Sheet at 3. As such, though each of the
22 numerous candidates on the ballot benefited from Rescue California's efforts, that committee did

¹⁴ Without an investigation, it cannot be said with certainty that none of Rescue California's solicitation or advertising materials refers to any candidate. However, based on a review of the committee's website (<http://www.rescuecalifornia.com/>) and several of its advertisements, the available information suggests it did not advocate for or even refer to any replacement gubernatorial candidate.

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1 not support or even refer to any one of them. *Id.* (“[while] an expenditure by a ballot measure
2 committee that relates solely to the ballot measure question . . . may indirectly benefit the
3 candidate’s election campaign, it does so without reference to the candidate himself or herself”).
4 The only person Rescue California appears to have “referred to” was former Governor Davis,
5 who, by law, could not be a candidate. Cal. Const. Art. II, § 15(c) (“If the majority vote on the
6 question is to recall, the officer is removed and, if there is a candidate, the candidate who
7 receives a plurality is the successor. The officer may not be a candidate.”); Cal. Gov’t Code
8 § 11381(c). Thus, even if fundraising activities on behalf of a state ballot measure committee
9 could satisfy the requirements of section 441i(e)(2), Rep. Issa’s efforts on behalf of Rescue
10 California could not.

11 **D. Rescue California Appears to Have Violated 2 U.S.C. § 441i(e)(1)(B).**

12 In addition to Federal officeholders, section 441i(e)(1)(B) also prohibits entities
13 “established, financed, maintained, or controlled” by Federal officeholders from “soliciting,
14 receiving, or spending non-Federal funds in connection with any election other than an election
15 for Federal office.” 2 U.S.C. § 441i(e)(1)(B). As discussed above, the available information
16 suggests Rep. Issa established, financed, and maintained Rescue California. As such, section
17 441i(e)(1)(B) applies to all donations received by Rescue California from prohibited sources or
18 in excess of the Act’s limits. *See* AO 2003-12.¹⁵

19 Section 441b(a) prohibits corporations from making contributions in connection with
20 elections for Federal office. Disclosure forms filed with the California Secretary of State reveal

¹⁵ Rescue California is not entitled to the section 441i(e)(2) exception. That provision is not available for fundraising activities on behalf of a ballot measure committee like Rescue California because it is not a campaign committee. *See supra* Section II.C.4.

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1 \$1,894,200 in corporate donations to Rescue California. Attachment 4.¹⁶ It also appears that
2 Rescue California violated the Act by receiving donations in excess of the Act's limits. 2 U.S.C.
3 § 441i(e)(1)(B)(ii). The Act permits individuals and multicandidate political committees to
4 contribute up to \$5,000 per year to "any other political committee." 2 U.S.C. §§ 441a(a)(1)(C),
5 (2)(C). Forms filed with the California Secretary of State reveal that Rescue California received
6 approximately \$447,786 in excessive donations from individuals and multicandidate committees.
7 See Attachment 5.

8 Though Rescue California appears to have violated the Act by receiving donations from
9 prohibited sources, it does not appear that the sources themselves, other than Rep. Issa, have
10 violated the Act. While each of the corporate entities listed in Attachment 4 is prohibited under
11 section 441b(a) from making contributions in connection with an election for Federal office, the
12 Act does not prohibit these entities from making donations in connection with a State election,
13 such as the California recall election. *Id.*; see also 11 C.F.R. § 114.2(b)(1).

14 Based on the above, it appears to this Office there is reason to believe Rep. Darrell Issa
15 and Rescue California violated 2 U.S.C. § 441i(e)(1)(B).

16 **IV. PROPOSED DISCOVERY**

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¹⁶ Donations from Greene Properties account for \$1,760,000 of this amount. The remaining \$134,200 appears to have come from other corporate entities.

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V. RECOMMENDATIONS

1. Find reason to believe Rep. Darrell Issa violated 2 U.S.C. § 441i(e)(1)(B).
2. Find reason to believe Rescue California . . . Recall Gray Davis and Vona L. Copp, as treasurer, violated 2 U.S.C. § 441i(e)(1)(B).
3. Approve the appropriate Factual and Legal Analyses.

4.

5. Approve the appropriate letters.

11/5/03
Date

Lawrence H. Norton
Lawrence H. Norton
General Counsel

Rhonda J. Vosdingh
Rhonda J. Vosdingh
Associate General Counsel
for Enforcement

Jonathan Bernstein
Jonathan Bernstein
Assistant General Counsel

Jesse B. Christensen
Jesse B. Christensen
Attorney

Attachments:

1. Rescue California – Statement of Organization. May 12, 2003.
2. Late Contribution Report – May 17, 2003 (showing May 8, 2003 donation).
3. California Fair Political Practices Commission, Fact Sheet – Recall Elections, July 2003.
4. Chart showing corporate donations to Rescue California.
5. Chart showing excessive donations to Rescue California.

Recall Elections

The power of the voters to remove an elective officer by recall is set forth in the California Constitution Article II, §§ 13-19, and the California Elections Code §§ 11000 et seq. The Political Reform Act regulates campaign activity in a recall election. All candidates and committees that raise and spend funds in connection with a recall election have full reporting and disclosure obligations under the Act. In addition, Proposition 34 has added new provisions applicable to state officials and candidates involved in a recall effort.

Application of Contribution Limits to State Recall Elections

1. How is a recall election different from a typical election of a candidate for public office?

Recall elections are unique because they have both the characteristics of a ballot measure *and* a candidate election. Most recalls have two distinct parts - 1) Shall the officeholder be recalled from office?; and 2) If the officeholder is recalled, who shall replace the recalled official? The first part is the actual recall, and a recall falls within the definition of a "measure" under section 82043 of the Act. As a result, state law treats recall elections as ballot measures, the "issue" being whether the officeholder should be recalled. In contrast, the second part on the ballot is actually a candidate election, the question being who shall be elected to the vacant office. Because different rules sometimes apply between the two types of elections, the answers to questions about conduct related to "the recall" depend on which part of the election is involved.

2. Is the elected state officer who is the target of a state recall subject to contribution limits?

No. Proposition 34 expressly states that an elected state officer who is the target of a recall may accept contributions into a committee established to oppose the qualification of the recall or the recall election without regard to the contribution limits. (Section 85315; Regulation 18531.5.) The target candidate is not subject to expenditure limits. (Regulation 18531.5.)

3. Are replacement candidates running in a state recall election subject to contribution limits? Yes. Replacement candidates are subject to the contribution limits of the Act put in place by Proposition 34. For example, in 2003 the contribution limit for candidates for Governor is \$21,200 per contributor. (Section 85301; Regulations 18531.5 and 18545.) Expenditure limit provisions apply to replacement candidates. For 2003, the expenditure limit for the office of the Governor is \$10,624,000.

4. Why are the replacement candidates running in the gubernatorial recall subject to the contribution limits if the target elected officer is not? Proposition 34, the campaign contribution limit law passed by the voters in November of 2000, enacted contribution limits that apply to all candidates seeking elective state office. The replacement candidates are seeking the office of governor in the recall election and therefore the \$21,200 per contributor limit applies to them. Proposition 34 contained a specific statutory provision, section 85315, which exempts the target of

a recall from the contribution limits when raising funds to defend against a recall. Proposition 34 does not contain any parallel provision excepting replacement candidates in a recall from the contribution limits that apply as a matter of law to candidates seeking state office.

5. Are there any restrictions on the amount of funds a candidate may expend on his or her own campaign? No. Under the Act, there is no limit on the amount of personal funds a candidate may contribute to his or her own campaign. (Section 85301(d).) However, this may cause an opponent's voluntary expenditure limits to be lifted. (Section 85402.) Also, a candidate may not personally loan to his or her campaign an amount, the outstanding balance of which, exceeds \$100,000. (Section 85307.)

6. May a local jurisdiction impose contribution limits on the subject of a recall election and replacement candidates? Nothing in the Act prohibits a local jurisdiction from imposing contribution limits on the subject of a recall election or a replacement candidate, so long as the local ordinances do not prevent anyone from complying with the Political Reform Act. (Section 81013; *Angus Advice Letter*, No. A-97-173.)

Donors

7. How do donors know whether the committee to which they contribute is governed by limits? As shown above, contributions to a ballot measure committee are not subject to limits, whereas contributions to candidate committees are limited. Committees controlled by candidates already must identify the committee by name in solicitations. Also, candidates for elective state office must identify the specific name of the committee and the office sought. (Regulation 18523.1.) The Commission strongly recommends that committees make clear in solicitations whether the committee is subject to limits. A donor should contact the committee before making a donation if the donor is uncertain about the type of committee to which he or she wishes to contribute.

Elected Officer Subject to Recall

8. May an elected state officer who is subject to a recall make expenditures to oppose the recall and expenditures to oppose replacement candidates from his or her committee? Yes, the target officer may make expenditures from a committee established to oppose the recall to oppose the qualification of a recall against him or her and to oppose the recall election. Expenditures by the target officer from such a committee may include expenditures to oppose the recall and to oppose the election of replacement candidates.

Replacement Candidates

9. May a replacement candidate control a ballot measure committee established to support a recall? Yes. The Commission has previously advised that a candidate may control a ballot measure committee. (*Kopp Advice Letters*, Nos. A-97-390 and A-97-390a; *Olson Advice Letter*, No. A-89-363; *Leidigh Advice Letter*, No. A-89-170.) Extending this advice to recalls, a

replacement candidate may control a ballot measure committee supporting a recall.

10. What does it mean when a candidate "controls" a committee? A candidate "controls" a committee when he or she has a significant influence on the actions or decisions of the committee. (Section 82016.) To determine whether a candidate controls a committee, the FPPC looks at the degree of the candidate's involvement in the committee's activities. The involvement of a candidate includes the involvement of his or her campaign committee and his or her agents. (*Roberti* Advice Letter, No. I-90-339; *Madden* Advice Letter, No. A-85-197.) Although certain activities are not sufficient by themselves to constitute control, each is a factor to be considered in determining whether the candidate controls the committee. For example, soliciting funds on behalf of a committee by itself would not indicate control of the committee. However, such activity is relevant to whether the committee is controlled by the candidate. (*Woodruff* Advice Letter, No. I-89-180.) On the other hand, a candidate or an elected officer who is a voting member of a committee's board of directors is presumed to be a "controlling candidate." (*Ferguson* Advice Letter, No. A-86-044.)

11. Why aren't contributions to a ballot measure committee controlled by a replacement candidate subject to limits? Contributions to ballot measure committees are generally not subject to limits, based on the Supreme Court case *Citizens Against Rent Control v. Berkeley*. A ballot measure committee controlled by a replacement candidate may accept contributions to support a recall that are not subject to limits (except contributions from other candidates, which are subject to limits). (See Question 19.)

12. May a ballot measure committee controlled by a replacement candidate make expenditures to support the recall and expenditures to promote the replacement candidate's candidacy from funds not subject to limits? No. Expenditures to promote a replacement candidate's candidacy, including payments for communications that expressly advocate the election of the replacement candidate, must be made from the replacement candidate's committee for office which is subject to the Act's limits, not from the ballot measure committee. (Sections 85200-85201; Regulation 18521; *Mathys* Advice Letter, No. I-00-068; *Weems* Advice Letter, No. A-91-448) According to this rule, any campaign expenditures of a candidate for election to a specific office must be made from the candidate's committee created for that office. As a result, a ballot measure committee also controlled by the candidate may not make expenditures that promote the candidate's candidacy. While it may be true that an expenditure by a ballot measure committee that relates solely to the ballot measure question (and thus not subject to contribution limits) may indirectly benefit the candidate's election campaign, it does so without reference to the candidate himself or herself. Thus, expenditures from a ballot measure committee controlled by a replacement candidate may only address the first question on the ballot – whether to recall the elected official.

13. Conversely, may a replacement candidate make expenditures to promote his or her candidacy and to support a recall from his or her committee for office? Yes. All expenditures made by the replacement candidate that promote his or her candidacy must be made from his or her committee for office which is subject to contribution limits. For example, payments for communications that expressly advocate the election of a replacement candidate, and expenditures for a consultant and a poll furthering the replacement candidate's election must be made from the

replacement candidate's committee for office. In addition, the replacement candidate may make expenditures specifically supporting the recall from his or her candidate committee.

14. If an expenditure by a replacement candidate both promotes his or her candidacy and supports the recall, may the expenditure be apportioned between the candidate's ballot measure committee and his or her candidate committee for office? Yes. If a candidate can clearly show that a part of an expenditure relates solely to the ballot measure issue, the ballot measure committee may pay for that cost. Where such a showing cannot be made, the expenditure must be paid for by the candidate's committee for office. (Sections 85200-85201.)

15. May I make a joint expenditure out of the ballot measure committee and be reimbursed by the committee for office? No. Any expenditures by a candidate that promote his or her candidacy must be made from the candidate committee. (Sections 85200-85201; See Question 12.) A candidate committee may, however, be reimbursed by the ballot measure committee if the costs of the expenditure may be apportioned as indicated above.

Other Committees

16. May a single campaign committee be formed to oppose the recall of two or more officeholders in a recall election? Yes. This committee would be primarily formed and would be subject to any applicable limits. If the committee is controlled by a candidate or officeholder, the committee would also be a controlled committee.

17. May a general purpose committee use its funds to support or oppose a recall effort? Yes.

18. Non-Controlled Committees primarily formed to support or oppose a replacement candidate are subject to the \$5,000 per contributor limit if they make contributions to state candidates. (Section 85303.) If such committees do not make contributions to state candidates, but only make independent expenditures for or against replacement candidates, they are not subject to contribution limits. (*Buckley v. Valeo*.)

19. Are contributions by other elected officials to a candidate's controlled ballot measure committee subject to limits? Yes. Contributions from candidates (and officeholders) for elective state office (and their controlled committees) may not make contributions to *any* committees controlled by other candidates in excess of \$3,200, including a ballot measure committee. (Section 85305, Regulation 18535)

Other Provisions of the Act

20. How do other contribution rules and the prohibition on independent expenditures by controlled committees (section 85501) apply to a state recall? Under section 85501, a candidate controlled committee may not make independent expenditures. However, a candidate's expenditures against his or her opponents are not considered "independent expenditures" subject to the prohibition of section 85501. Accordingly, expenditures made by the target officer to oppose

replacement candidates are not independent expenditures prohibited by section 85501. Likewise, expenditures made by replacement candidates to oppose the target officer and other replacement candidates are not independent expenditures prohibited by section 85501. The target officer would, however, be prohibited under section 85501 from making independent expenditures expressly advocating the election of a replacement candidate from any controlled committee of his or hers. Also, a candidate controlled ballot measure committee may not make contributions to support or oppose candidates, including the candidate who controls the ballot measure committee. (*Mathys* Advice Letter, No. I-00-068; *Weems* Advice Letter, No. A-91-448.)

21. How do the advertising disclosure provisions (sections 84501-84511) apply to a state recall? State and local ballot measures advertisements are required to contain disclosures naming major contributors. The name of a ballot measure committee (to support or oppose the recall) must meet certain identification requirements that identify interests of the major donors. Also, independent expenditures to support or oppose a candidate or ballot measure must identify the committee making the expenditure and its major contributors.

22. How do the issue advocacy disclosure provisions (section 85310) apply to a state recall? Section 85310 requires disclosure of communications identifying a state candidate made within 45 days of an election. This provision is designed to provide disclosure of large payments (over \$50,000) for communications used for issue advocacy campaigning. Payments for such election-related communications identifying a state candidate might otherwise go undisclosed because they do not expressly advocate the election or defeat of a state candidate, and are therefore not required to be reported as independent expenditures. The disclosure requirements of section 85310 do apply in a state recall election to certain payments for communications identifying state candidates that are not otherwise disclosed. (If a payment for a communication identifying a state candidate is otherwise reported as an independent expenditure, the payment need not be reported under section 85310.)

Filing Obligations

23. What are a Proponent's Filing Obligations? An important consequence of the fact that recalls are treated as ballot measures, is that a person or group of persons who raises or spends more than \$1,000 for a potential recall attempt will not be a "committee" pursuant to section 82013 until the target of the recall is served with a notice of intention to circulate a recall petition and the notice is filed and published, or posted pursuant to Elections Code sections 11006 and 11021. However, once this notice is given, the committee must report on its first campaign statement all contributions received and expenditures made for the purpose of influencing the electorate to sign a recall petition or to vote for or against a recall election regardless of when the contributions or expenditures were made.

24. What Are Officeholders' and Replacement Candidates' Filing Obligations? An officeholder who is the subject of a recall must disclose all contributions received and expenditures made in anticipation of a recall election, even if the officeholder has not been served with notice of intention to circulate a recall petition.

A replacement candidate must also disclose all contributions received and expenditures made pursuing election even if the subject of the recall has not been served with notice of intention to circulate a recall petition.

A committee's filing obligations during a recall election are as follows: generally speaking, proponents of a recall, the target of the recall, and replacement candidates must file two pre-election campaign statements. In addition, all committees must make the usual semi-annual filings, and ballot measure committees must make the required quarterly filings.

The officeholder or replacement candidate has several options regarding what campaign account to use so long as they are consistent with the one bank account rule and other fundraising restrictions of Proposition 34 or local law. He or she may use his or her existing bank account (if any), an account formed for a future election (if any), or establish a separate ballot measure committee to support or oppose the recall. Section 85315 specifically provides that a state officer who is the target of a recall may open a new campaign committee and account to oppose the recall. All of these committees would be candidate controlled, and forms 410 (statement of organization) and 501 (candidate intention) must be on file.

25. How does a committee determine its filing schedule? The Commission's manuals for candidates and committees explain how to compute the filing schedule for election dates *other* than the normal election dates. Also, because the date of the election can vary, the filing schedule may be awkward depending on a candidate's or committee's existing filing obligations, if any. Because of this possibility, a candidate or committee may ask the FPPC's technical assistance division for a filing schedule and may ask the Commission for written permission to combine reports and statements if certain reports or statements overlap.

After the Recall Election

26. What may a candidate controlled committee do with remaining funds after the recall effort is finished? The funds of a candidate controlled committee become surplus funds under section 89519 after a recall. Section 85315(b) provides that after a recall petition or election is finished, the target state officer's recall committee must wind down its activities. Its remaining funds are treated as surplus under section 89519(b) and must be spent within 30 days.

27. What may a ballot measure committee (formed primarily to support or oppose a recall effort) do with funds remaining after the recall effort is finished? Generally speaking, the committee may spend its funds on anything that is reasonably related to a political, legislative, or governmental purpose, if there is no personal benefit to an officer of the committee. Also, if the committee would like to remain in operation, it may do so. However, the statement of organization may have to be amended to reflect the new purpose of the committee.

Fair Political Practices Commission
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916. 322.5660

FPPC 03-08-11
Revised 7/2003

CORPORATE CONTRIBUTIONS TO RESCUE CALIFORNIA

DATE RECEIVED	COMPANY	AMOUNT
5/8	Greene Properties, Inc.	\$100,000
5/19	Greene Properties, Inc.	\$100,000
5/20	Dan Gamel, Inc.	\$10,000
5/21	Shehadey Properties Ltd	\$5,000
5/22	Chadwick F. Smith, M.D., Inc	\$500
5/22	Mountain View Chevrolet	\$5,000
5/23	Greene Properties, Inc.	\$245,000
5/30	Bobby D. Enterprises, Inc. dba Filippis Pizza Grotto	\$200
5/30	Greene Properties, Inc.	\$200,000
5/30	Hayward Capital Inc.	\$100
6/2	Anchor Investments	\$100
6/2	Donco Business Center	\$100
6/4	Grandon Ranch Corporation	\$100
6/4	Reeve Trucking Co.	\$100
6/4	Renaissance	\$100
6/4	Technicad Inc.	\$100
6/4	The Hearing Aid Center	\$100
6/5	Greene Properties, Inc.	\$155,000
6/9	Ashwill Associates-Orange	\$100
6/9	Bruno's Iron & Metal	\$100
6/9	Central House Internet	\$500
6/9	Diversified Medical Record Services	\$150
6/9	Tile in Style	\$100
6/9	Western Automated Utilities	\$100
6/10	Abraham Bogdan Construction	\$100
6/10	Balloons Galore	\$100
6/10	Greene Properties, Inc.	\$200,000
6/10	Howard Aviation Inc.	\$100
6/10	Lyons-Magnus	\$5,000
6/10	Reyneveld Enterprises, Inc.	\$100
6/10	RJR Enterprises	\$100
6/10	The Rotsart Group	\$100
6/10	Walker Wood Products	\$325
6/11	C & C Kid's Kompany, Inc.	\$100
6/11	Commerce Printing Services	\$250
6/11	Early California Financial Center	\$100
6/11	Forester Plumbing, Inc.	\$100
6/11	Garage Cabinet Company	\$100
6/11	Joseph P Reardon Funeral Home	\$100

6/11	Koerick Sterling Communities, LLC	\$500
6/11	Los Altos Rancho Shopping Center	\$400
6/11	Mark S. Gerhard Enterprises, Inc.	\$100
6/11	Moldings Plus Inc.	\$100
6/11	Reeder/Sutherland Inc.	\$100
6/12	C Squared Consulting	\$100
6/12	C.P. Systems Inc.	\$100
6/12	Diversified Investors Agency	\$150
6/12	Joystick Technologies, Inc.	\$300
6/12	Poletti Properties	\$150
6/12	Tehachapi Summit Travelodge	\$100
6/13	Aguinaga Fertilizer Co.	\$150
6/13	Arboles Animal Clinic	\$100
6/13	BCT	\$100
6/13	Greene Properties, Inc.	\$150,000
6/13	Martin Roofing Co.	\$250
6/13	Terry Tuell Concrete Inc.	\$1000
6/13	The Hoagy Co., Inc.	\$100
6/16	Bracken Bird Farm	\$100
6/16	M.H. Springer & Associated Inc.	\$100
6/16	Miller & Co., Inc.	\$100
6/16	Riddio Construction Co.	\$100
6/16	Techmatic-San Diego	\$100
6/16	Two Bees Enterprise, LLC	\$100
6/16	Westside Construction	\$150
6/17	Nortech Waste LLC	\$100
6/18	Acorn Engineering	\$250
6/18	Contract Illumination	\$100
6/18	Custom Asphalt, Inc.	\$100
6/18	Henley Properties, Inc.	\$5,000
6/18	Huntington Beach Dodge	\$300
6/18	McMonigle Residential Group, Inc.	\$500
6/18	Sage Staffing	\$150
6/18	Sternler Company	\$300
6/18	Talley and Associates, Inc.	\$1,000
6/18	United Agribusiness League	\$5,000
6/19	Advantage Heritage, LLC	\$100
6/19	California Enterprise Zone	\$500
6/19	Craig H. Lovett, M.D., Inc	\$100
6/19	We Do Graphics, Inc.	\$100
6/19	F&F Properties	\$100
6/19	Fischer Industrial Properties	\$150
6/19	RND Construction, Inc.	\$100

6/19	The Whitman Co., Inc.	\$100
6/20	B&L Properties	\$100
6/20	Greene Properties, Inc.	\$130,000
6/20	House of Batteries	\$250
6/20	M.L. Eslinger & Associates	\$100
6/20	Payton Place	\$100
6/20	Regency Fire and Security Services	\$100
6/20	SBD Group, Inc	\$100
6/20	Schuster Homes, Inc.	\$100
6/23	ABC Swimming Pool Products	\$100
6/23	Archibald Flowers	\$200
6/23	Artcraft Planting & Finishing Co.	\$250
6/23	Border Assembly Corporation	\$100
6/23	Goglanian Bakeries, Inc.	\$200
6/23	J-Mar Apartments	\$100
6/23	Central Valley Trucking	\$100
6/23	Cress Williamson Real Estate	\$125 (made in 2 separate contributions on this date, \$100 and \$25)
6/23	Mechanical Metal Finishing Co.	\$100
6/23	Hoke Outdoor Advertising	\$500
6/23	Security Monitoring Co	\$100
6/23	Villa Auto Center	\$100
6/24	Atlas Performance Industries, Inc.	\$250
6/24	Carlsbad Self Service Car Wash	\$100
6/24	Competition Electric	\$100
6/24	Douglas W. Young & Assoc.	\$100
6/24	CRC Consulting Group, Inc.	\$100
6/24	Greene Properties, Inc.	\$250,000
6/24	Lencioni Associates	\$100
6/24	Labrador Franchises Inc	\$250
6/24	Nicole Carler-Forsythe & Assoc. Esq.	\$100
6/24	Quality Home Loans	\$500
6/24	Sec Civil Engineers	\$250
6/24	The Brentwood Square	\$100
6/24	Tom's Aircraft Maintenance, Inc.	\$100
6/24	Western Cellular Management	\$40,000
6/24	Western Development	\$100
6/25	Copy Dot	\$100

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6/25	Evans West Valley Spray Co , Inc	\$100
6/25	Harwin Corp	\$250
6/26	Metalore Inc.	\$100
6/16	Rowe Development Co.	\$100
6/27	O'Shaughnessy Construction Co.	\$100
6/27	Sanco Pipelines, Inc.	\$100
6/27	Steven Coz Trucking	\$100
6/27	Western Electrical Contractors	\$500
6/30	Champion Electric, Inc.	\$250
6/30	Channel Islands Village	\$500
6/30	Crevier BMW	\$1,000
6/30	Dress Wood Products	\$100
6/30	Lindblade Metalworks	\$500
6/30	P&G Investment Co.	\$250
6/30	Pinn Bros Construction Inc.	\$500
6/30	Robert Ringwald Apartment Rental	\$100
6/30	Stratton's Properties	\$100
6/30	Word & Brown Insurance	\$1,000

7/1	Blaine, Inc.	\$100
7/1	Cal Custom MFG	\$100
7/1	Fitzsimmons Lumber, Inc.	\$100
7/1	Jelly Belly Candy Co.	\$500
7/1	Kublich Lumber Co.	\$100
7/1	Mike and Joan Jensen Packing Co.	\$100
7/1	Valley Business Consulting	\$100
7/2	Greene Properties, Inc.	\$180,000
7/2	Greenfield Engineering Co.	\$250
7/2	Wholesale Equipment of Fresno, Inc.	\$100
7/3	Baxter Blasting Co.	\$150
7/3	Casa Maria Apartments	\$100
7/7	Frye Construction, Inc.	\$100
7/7	JRB Associates	\$100
7/7	Lozano Caseworks, Inc.	\$100
7/10	Della-Mora Plumbing, Inc.	\$100
7/10	Kit R. Larsen Co.	\$100
7/10	Porterville Concrete Pipe, Inc.	\$100
7/10	Westcliff Medical Laboratories	\$100
7/11	Cal Sierra Construction, Inc.	\$100
7/11	Jay Johnson AIA and Asso.	\$100
7/17	Griffin Electric, Inc.	\$100
7/17	Soto Provision, Inc.	\$100
7/18	Oliphant Enterprises, Inc.	\$100
7/21	Kester Rinehart Construction	\$100
7/25	Southern CA Lube Centers, Inc.	\$500
7/28	All Around Market Repair	\$100
8/4	Greene Properties, Inc.	\$50,000
8/4	Kent's Construction Service, Inc.	\$100
8/11	Western C Management, Inc.	\$25,000
9/15	Lowenberg Corporation	\$250
9/15	Lyons-Magnus	\$5,000
9/17	Central Valley Trucking	\$100
9/17	No. California Collection	\$100
9/18	Casa Maria Apartments	\$50
9/18	Pyle & Associates, Inc.	\$100
9/18	Rogers, Rogers Associates	\$100
9/18	Sork Company, Inc.	\$100
9/19	ABC Swimming Pool Products	\$250
9/19	D.J. McCann Construction	\$100
9/19	Dilbeck Realtors	\$100
9/19	IPT Partners, LLC	\$100

9/19	Marcos & Donald Investments, Inc.	\$250
9/19	Oak Valley Llama Ranch	\$100
9/19	Reeve Trucking Co	\$100
9/19	S F C.J , Inc.	\$50
9/19	Tri Maids to Clean in Teams	\$100

TOTAL Corporate Contributions: \$1,894,200
Total Greene Properties, Inc. contributions: (\$1,760,000)
Remaining Total \$ 134,200

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CONTRIBUTIONS OVER \$5,000 TO RESCUE CALIFORNIA

DATE RECEIVED	CONTRIBUTOR	AMOUNT	TOTAL EXCESSIVE (ABOVE \$5,000)
5/23 and 7/9	The Lincoln Club of Orange County Federal PAC	\$50,000 (5/23); \$25,000 (7/9)	\$70,000
5/28	Friends of John Campbell	\$10,000	\$5,000
5/28, 6/13 and 5/30	Friends of Rico Oller	\$7,200 (5/28); \$695 (6/13); \$327 (6/13); \$34,414 (5/30)	\$37,636
5/28	Cristi Milazzo – Cristich	\$7,000	\$2,000
6/7, 8/24	Raveesh Kumra	\$50,000 (6/7); \$34,000 (8/24)	\$79,000
6/16	Doug LaMalfa for State Assembly 2004	\$5,100	\$100
6/16	Jeff Denham for State Senate	\$17,000	\$12,000
6/18 and 6/30	Robert J. Eichenberg	\$5000 (6/18); \$1000 (6/30)	\$1,000
6/13 and 7/9	Strickland for Assembly	\$2,000 (6/13); \$5,200 (7/9)	\$2,200
6/30 and 7/21	The Lincoln Club of Orange County State PAC	\$5,100 (6/30); \$1,250 (7/21)	\$1,350
8/3	Arnold Schwarzenegger	\$50,000	\$45,000
8/19	Darrell Issa	\$35,000	\$30,000
8/22	William E. Simon Jr.	\$10,000	\$5,000
8/29	Frank E. Baxter	\$10,000	\$5,000
9/5	Schwarzenegger's Total Recall Committee	\$10,000	\$5,000
9/10	A.G. Spanos	\$100,000	\$95,000
9/26	New Majority PAC	\$7,500	\$2,500
9/29 and 10/6	Friends of Cristi Cristich	\$3,750 (9/29); \$1,823 (10/6)	\$573
10/2	Darrell Issa	\$50,000	\$50,000

TOTAL EXCESSIVE CONTRIBUTIONS: \$448,359